



March 13, 2020

Via FOIAOnline.gov

Records, FOIA, and Privacy Branch  
Office of Environmental Information  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW (2822T)  
Washington, DC 20460

Re: **Freedom of Information Act Request for Records Related to the U.S. Environmental Protection Agency's Proposed 2020 Reissuance and the Issuance of the 2015 National Pollutant Discharge Elimination System Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity**

Dear Freedom of Information Officer:

On behalf of the Center for Progressive Reform (CPR) and pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. §552, I write to request that the U.S. Environmental Protection Agency (EPA) provide copies of the records described below.

CPR is a network of more than 50 acclaimed legal scholars from across the United States who work with a professional staff of policy analysts and communications experts to advocate for robust public protections. Our legal and policy research is integral to the progressive movement, supporting environmental, labor, and consumer protection advocates.

This request is for documents (electronic or otherwise) that may be in the custody or control of the EPA. We appreciate your assistance in helping us gather these documents. I request copies of, and/or the opportunity to inspect, all records in your custody and control, regardless of format, medium, or physical characteristics, and including electronic records and information, audiotapes, videotapes and photographs, regarding the:

- Proposed 2020 reissuance of the National Pollutant Discharge Elimination System (NPDES) Multi-Sector General Permit (MSGP) for Stormwater Discharges Associated with Industrial Activity (hereinafter 2020 MSGP); and the

- 2015 issuance of the National Pollutant Discharge Elimination System (NPDES) Multi-Sector General Permit (MSGP) for Stormwater Discharges Associated with Industrial Activity (hereinafter 2015 MSGP).

CPR seeks the requested records to shed light on whether and to what extent the EPA's reissuance of the MSGP considers certain technical information and analysis related to climate change and the risks posed by extreme weather, precipitation, and flooding, among other climatological, meteorological, and/or flood-related phenomena.

### **Requested Records**

CPR requests that the EPA produce the following within 20 business days:

Any and all documents related to climatological, meteorological, and/or flood-related data, analysis, or information generated or obtained by EPA from January 2014 to Present relied upon for the purpose of devising, revising, or any other deliberative process related to the drafting and review of the 2015 MSGP and the 2020 MSGP; including, for example, but not limited to, data, analysis, and projections for precipitation, flooding, sea level rise, hurricane storm surge, ambient air temperature, stormwater, any extreme storms or other similar weather events. Please include any internal EPA communications and related documents as well communications and related documents between EPA and third-party entities regarding any of the listed information above.

For this request, CPR requests that the EPA use the following terms to help identify responsive records:

- a. "Flood," "Flooding," "Flood Zone," and "Floodplain"
- b. "Extreme weather"
- c. "Hurricane"
- d. "Storm surge"
- e. "Sea Level Rise"
- f. "Precipitation"
- g. "Climate" and "Climate Change"
- h. "Adaptation" and "Adaptive"

Please provide all responsive records from January 1, 2014, to the date the search is conducted. Please note that we do not wish to obtain copies of any news or press clippings regarding these issues that are otherwise publicly available; accordingly, you may omit press clippings from the documents provided in response to this request, unless the record includes commentary on the press coverage.

In addition to the records requested above, CPR also requests records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched and any tracking sheets used to track the processing of this request. If EPA uses FOIA questionnaires or certifications completed by individual

custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

CPR seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these records. No category of material should be omitted from search, collection, and production.

Please search all records regarding agency business. You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA. It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; we have a right to records contained in those files even if material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.

You should institute a preservation hold on information responsive to this request. CPR intends to pursue all legal avenues to enforce its right of access under FOIA, including litigation if necessary. Accordingly, the EPA is on notice that litigation is reasonably foreseeable.

### **Fee Waiver Request**

CPR requests that all fees in connection with this FOIA request be waived in accordance with 5 U.S.C. § 552(a)(4)(A)(iii), because disclosure of this information is likely to contribute significantly to public understanding of operations or activities of the government and will not further any commercial interest. In particular, the requested records will contribute significantly to the public understanding of how the EPA develops policies related to protection of public health and environmental integrity in accordance with its congressionally outlined authorities. Greater public understanding of the regulatory process is important, because the public is affected by federal regulations, including those issued and enforced by the EPA, every day. In addition, this enhanced understanding of the regulatory process

will enable the public to participate more effectively in the EPA's future NPDES permit issuance and rulemaking activities, such as through the Administrative Procedure Act's notice-and-comment rulemaking process.

Moreover, CPR is a nonprofit organization specializing in the legal, economic, and scientific issues that surround federal regulation. CPR works to advance the public's understanding of the issues addressed by the country's regulatory laws. In particular, CPR seeks to educate the public and policymakers about how the government's authority and resources may best be used to preserve collective values and to hold accountable those who ignore or trivialize them.

Consistent with its organizational mission, CPR intends to use the requested records to educate the public about EPA's development of regulatory policies for public health and environmental protections. After analyzing and synthesizing the information contained in these records, CPR will report its findings to the public through a variety of media, including a public comment submission in response to EPA's proposed 2020 reissuance of the MSGP, white papers, books, and Internet articles. CPR has the unique expertise and experience to analyze and educate the public about these kinds of regulatory policy matters.

### **Records Delivery**

Where possible, please provide responsive material in electronic format by email or in PDF format on a USB drive. Please send any responsive material being sent by mail to:

David Flores  
Center for Progressive Reform  
2021 L St NW #101-330  
Washington, DC 20036

If it will accelerate release of responsive records, please also provide responsive material on a rolling basis. At no point should the search for – or the deliberation concerning – certain records delay the production of others that the agency has already retrieved and elected to produce.

Thank you for your cooperation. If you find that this request is unclear in any way, please do not hesitate to contact me to see if I can clarify the request or otherwise expedite and simplify your efforts to comply. I can be reached by e-mail at [dflores@progressivereform.org](mailto:dflores@progressivereform.org).

Sincerely,

**David Flores, J.D.**

Senior Policy Analyst, Center for Progressive Reform